(14,944.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 350.

THE GULF, COLORADO AND SANTA FÉ RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

P. JOHNSON & SON.

IN ERROR TO THE COUNTY COURT OF COLEMAN COUNTY, TEXAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 25, 1895.

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1 *Caption.*

THE STATE OF TEXAS, }
County of Coleman. }

At a term of the county court begun and holden at Coleman, within and for the county of Coleman, before the Hon. H. A. Orr, and ending on the 28th day — October, A. D. 1891, the following case came on trial, to wit:

Pl'ffs' Complaint. Filed 16th Sept., 1890, & Oct. 24th, A. D. 1890.

In Justice Court, Precinct No. 1, Coleman County, Texas.

P. JOHNSON & SON, Plaintiff-,
v.
GULF, COLORADO & SANTA FÉ R'Y CO., Defendant. } No. 248.

THE STATE OF TEXAS, }
Coleman County. }

Now comes Presley Johnson & Son, a firm composed of Presley Johnson and R. S. Johnson, who reside in Coleman county, Texas, and file their complaint against the Gulf, Colorado & Santa Fé R'y Co., a corporation under the laws of the State of Texas, with an agent at Coleman, Texas, to wit, J. T. Brien, and represent and set forth as their complaint and cause of action for damages that heretofore, to wit, on the 2nd day of August, A. D. 1890, the Spiral Spring Buggy Co., of Cincinnati, Ohio, delivered to the Ohio & Mississippi R'y Co., at Cincinnati, Ohio, for transportation, one phaeton, complete, with top, wheels, shafts, &c., and marked and consigned to Johnson & Son, Coleman, Texas.

2 That on said last-named date said railroad Co. *company* executed and delivered their bill of lading or freight contract, whereby they contracted and agreed to transport said phaeton from Cincinnati, Ohio, to Coleman, Texas, at a stipulated freight rate of 202½ cents per one hundred ponds, and said phaeton weighed 530 pounds, as proven by the scales of the Gulf, Colorado & Santa Fé Railway Co., which bill of lading or freight contract is hereto attached and made a part of this complaint.

That said phaeton, shipped as aforesaid, was, on the 18th day of August, A. D. 1890, in the possession of the Gulf, Colorado and Santa Fé Railway Company, at Coleman, Coleman county, Texas, and on said day and date the plaintiffs tendered J. T. Brien, the agent of said Gulf, Colorado and Santa Fé Railway Co. at Coleman, Texas, the sum of $10.75, being the freight charges due on said phaeton, as shown by the bill of lading for said phaeton, and demanded said phaeton from J. T. Brien, agent as aforesaid, and the said J. T. Brien, agent of said Gulf, Colorado & Santa Fé Railway Co., did then and there refuse to deliver to us, the said

Presley Johnson & Son, said phaeton, but demanded a greater sum and a greater freight rate than that specified in the bill of lading, to wit, the sum of $12.55, and did refuse to de-
3 liver to said Johnson & Son, who were the owners of said phaeton and the consignee in said bill of lading menfioned, said phaeton unless the said Johnson & Son would pay the said sum of $12.55, and said Gulf, Colorado and Santa Fé Railway Co. did keep & hold said phaeton seven days after plaintiffs had tendered the freight charges due on said phaeton, as shown by the bill of lading—that is to say, from the 18th day of August, 1890, to the 25th day of August, 1890; that by reason of the wrongful acts of said railroad company and its agents said Gulf, Colorado and Santa Fé Railway Co. became liable and bound to pay plaintiffs, Johnson & Son, as damages the sum of $10.75 for every day said company held said phaeton after tender of the payment of the freight charges as shown by the bill of lading, which, for the seven days they so held said phaeton, would amount to the sum of seventy-five & $\frac{25}{100}$ dollars.

Plaintiffs ask judgment for said sum, $75 & $\frac{25}{100}$, and costs of suit.

T. H. STRONG,
Att'y for Plaintiff-.

Indorsements: Filed September 16th, 1890. T. W. White, justice of the peace, precinct No. 1, Coleman county, Texas.
4 Filed this 24th day of Oct., 1890. H. D. Walker, clerk county court, Coleman county, Texas.

Defendant's Original Answer. Filed 9th July, 1891.

In the County Court of Coleman County, State of Texas.

P. JOHNSON & SON
vs.
GULF, COLO. & SANTA FÉ R'Y CO. } No. —.

Now comes the defendant in the above numbered and entitled cause and demurs and excepts to the plaintiffs' complaint, and for cause thereof says that the same does not state facts sufficient to constitute a cause of action, for if all of the facts alleged in said petition are taken as confessed, yet, as a matter of law, the plaintiffs are not entitled to judgment thereon.

2nd. For further exception and demurrer to said complaint the defendant says that it is wholly insuf-icient in law to entitle the plaintiff- to judgment, because it does not appear therefrom that the bill of lading was issued by the authority or consent of the defendant, or was ever adopted, ratified, or confirmed by the defendant.

3d. For further exception and demurrer to said petition the
5 defendant says that it appears therefrom that the shipment in question was an interstate shipment from Cincinnati, Ohio,

to Coleman, Texas, and that if the statute of Texas under which recovery is sought be held to apply to said shipment, that it is invalid because Congress of the United States has exclusive power to regulate commerce among the States, and they have exercised such power by the passage of an act entitled "An act to regulate commerce," commonly known as the interstate law, and the various amendments thereof, prior to the time of the shipment in this case, and Congress having fully exercised its power, it is to be presumed that it has prescribed all regulations that it deemed needful, and it is not to be presumed that Congress intended that the peculiar regulations of each State should be added to the regulations prescribed by it, but, to the contrary, Congress intended to establish a uniform system of regulation for all of the States.

J. W. TERRY &
ALEXANDER & CLARK,
Attorneys for Defendant.

And, further answering in this said cause, the defendant, The Gulf, Colorado and Santa Fé Railway Company, denies all and
6 each of the allegations stated and set forth in the plaintiffs' claim and petition, and of this it puts itself upon the country and is ready to verify and prays judgment of the court and for costs.

J. W. TERRY,
Attorney for the Defendant.

Indorsed: Filed this 9th day of July, 1891. H. D. Walker, clerk county court, Coleman county, Texas.

Transcript of Judgment from Justice's Court.

Filed 24th Oct., 1890. T. H. Strong, plaintiffs' attorney.

P. JOHNSON & SON, Plaintiff-,
vs.
GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, Defendant. } No. 796.

Suit for damage for $75.25 for the retention of goods for seven days after tender of freight charges, as shown by bill of lading, the charges, as shown by bill of lading, 202½ cents per 100 lbs., the goods weighing 350 lbs., am't tendered being $10.75. "Filed — day of ——, 18—. Citation issued the 16th day of Sept., 1890, returnable to Sept. term, A. D. 1890, and placed in the hands of J. T. Sanders, dept. sheriff of Coleman Co. Mailed to the sheriff of —— ——. Returned — executed — day of ——, 18—."

MONDAY, *September 22nd*, 1890.

On this day, this cause being regularly reached in its order on the docket and called for trial, the plaintiffs appeared by their
7 attorney and in person, and announced ready for trial; and the defendant, though legally cited to appear and though

present in the person of I. T. Brien, its agent, failed and refused to enter its appearance, but wholly made default; and the court, after hearing the evidence of plaintiffs, is of the opinion that the law is with the plaintiffs, and that the plaintiffs ought to recover for seven days' detention of the phaeton specified in plaintiffs' claim at ten & $\frac{73}{100}$ dollars per day, or the aggregate sum of seventy-five & $\frac{11}{100}$ dollars. It is therefore ordered, considered, and adjudged by the court that the plaintiffs, Presley Johnson & Son, a firm composed of Presley Johnson and R. S. Johnson, do have and recover of and from the defendant, The Gulf, Colorado & Santa Fé Railway Company, the said sum of seventy-five & $\frac{11}{100}$ dollars, with interest thereon from this date at the rate of eight per centum per annum, together with all costs in this behalf incurred, for which let execution issue.

T. W. WHITE,
Justice of the Peace, Precinct No. 1, *Coleman County, Texas.*

Now comes the defendant in the above-entitled cause and gives notice of appeal to the county court of Coleman county, Texas.

T. W. WHITE, *J. P.*

8 *Justice's Costs.*

Docketing cause	10
Citation, — copies	50
Swearing 1 witness	10
Judgment by default	50
Taking appeal bond	50
Transcript of docket	1 00
Taxing cost and bill	10

Constable's Costs.

Citation	70
Total costs	$3 50

STATE OF TEXAS,
County of Coleman.

I, T. W. White, justice of the peace, do hereby certify that the above and foregoing is a true and correct transcript of all the entries on my docket, on page 56, of all the proceedings had in my court in the cause of P. Johnson & Son *vs.* The Gulf, Colorado & Santa Fé Railway Company.

Witness my hand this 24th day of October, 1890.

T. W. WHITE,
Justice of the Peace, Precinct No. One, Coleman County, Texas.

Indorsed: Filed the 24th day of October, 1890. H. D. Walker, clerk county court, Coleman Co., Tex.

9 *Appeal Bond. Filed 26th Sept.*, 1890, *and 24th Oct.*, 1890.

In the Justice's Court of Precinct No. 1.

Before T. W. White, Esq., a justice of the peace in and for the county of Coleman, State of Texas.

P. JOHNSON & SON, a Firm Composed of Presley Johnson & R. S. Johnson, Plaintiffs,
vs.
GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, Defendant.
} No. 796.

Whereas P. Johnson & Son, firm composed of Presley Johnson & R. S. Johnson, the plaintiffs, recovered a judgment against The Gulf, Colorado & Santa Fé Railway Company, the defendant in the above entitled and numbered cause, on the 22nd day of September, A. D. 1890, before T. W. White, Esq., a justice of the peace in and for precinct No. 1, in the county of Coleman, State of Texas, for the sum of ($75.11) seventy-five $\frac{11}{100}$ dollars, with interest thereon from said date at the rate of 8 per cent. per annum, besides costs of suit, from which judgment the said Gulf, Colorado & Santa Fé Railway Company has appealed to the county court of Coleman county, State of Texas: Now, therefore, the said Gulf, Colorado & Santa Fé Railway Company, as principal, and W. H. Taylor & B. W. Oliphant, as sureties, acknowledge themselves bound to pay to the said P. Johnson & Son, firm composed of Presley Johnson & R.
10 S. Johnson, the sum of ($200) two hundred dollars, conditioned that the said Gulf, Colorado & Santa Fé Railway Company shall prosecute said appeal to effect and shall pay off and satisfy the judgment which may be rendered against the said Gulf, Colorado & Santa Fé Railway Company on such appeal.

Dated at Galveston, Texas, this 23d day of September, A. D. 1890.

THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY,
By J. W. TERRY, *Solicitor for Texas.*
W. H. TAYLOR.
B. W. OLIPHANT.

THE STATE OF TEXAS, }
County of Galveston. }

I, Alex. Easton, clerk of the district court in and for said county of Galveston, do hereby certify that W. H. Taylor and B. W. Oliphant, sureties, whose names appear signed to the annexed bond, are good, ample security for the amount therein stipulated; that they have property in said county subject to execution to a larger amount, and that if said bond was offered to me for approval the same would be accepted and approved.

To certify which I hereunto set my hand and the impress of my official seal, at my office, in the city of Galveston, on this the 24th day of Sept., 1890.

11 [L. S.] ALEX. EASTON,
Clerk District Court, Galveston County.

Endorsed: Filed Sept. 26th, 1890. T. W. White, J. P., pr. 1, Coleman Co., Texas. Filed this 24th day of Oct., 1890. H. D. Walker, clerk county court, Coleman county, Texas.

Defendant's 1st Amended Original Answer. Filed 9th Day July, 1891.

In the County Court of Coleman County, State of Texas.

P. JOHNSON & SON
vs.
GULF, COLO. & SANTA FÉ R'Y CO. } No. —.

Now comes the defendant and by leave of the court first had files this its first amended original answer in lieu of its original answer filed in the justice court on the 23d of September, 1890, as follows, to wit:

1st. Defendant excepts and demurs to the plaintiffs' complaint, and for cause thereof says that the same does not state facts sufficient to constitute a cause of action; and if all of the facts alleged in said petition are taken as confessed, yet, as a matter of law, the plaintiffs are not entitled to judgment thereon.

2nd. For further exception and demurrer to said complaint defendant says that it is wholly insufficient in law to entitle plaintiffs to judgment because it does not appear therefrom that the
12 bill of lading was issued by the authority or consent of the defendant or was ever adopted, ratified, or confirmed by the defendant.

3d. For further exception and demur-er to said petition the defendant says that it appears therefrom that the shipment in question was an interstate shipment from Cincinnati, Ohio, to Coleman, Texas, and that if the statute of Texas under which recovery is sought be held to apply to said shipment that it is invalid because Congress of the United States has exclusive power to regulate commerce among the States, and they have exercised such power by the passage of the act entitled "An act to regulate commerce," commonly known as the interstate commerce law, and the various amendments thereof, prior to the time of the shipment in this case; and Congress having fully exercised its power, it is to be presumed that it has prescribed all regulations that it deemed needful, and it is not to be presumed that Congress intended that the peculiar regulations of each State should be added to the regulations prescribed by it, but, to the contrary, Congress intended to establish a uniform system of regulation for all of the States.

J. W. TERRY &
ALEXANDER & CLARK,
Attorneys for Defendant.

13 Indorsements: Filed this 9th day of July, 1891. H. D. Walker, clerk county court, Coleman county, Texas.

Defendant's Original Answer. Filed 23d Sept., 1890, & Oct. 24, 1890.

In the Justice Court, Pr. 1, of Coleman County, Texas.

P. JOHNSON & SON
vs.
GULF, COLO. & SANTA FÉ R'Y Co. } No. 795.

Now comes the defendant, and, excepting to the plaintiffs' petition or account, says the same is insufficient in law, and of this it prays the judgment of the court.

2nd. For special exception the defendant says that the act of the legislature under which a recovery is sought is invalid and of no effect for the reason that it is in conflict with that provision of the Constitution of the United States which gives to Congress the exclusive power to regulate commerce between the States and Territories; and Congress having fully exercised its powers, it is to be presumed that it has prescribed all regulations in respect to interstate shipments that it deemed proper.

J. W. TERRY,
GOODWIN & GOODWIN,
Att'ys for Defendant.

14 Third. The defendand denies all and singular the allegations in the plaintiffs' petition contained, and says it is not guilty of the wrongs, injuries, and trespasses complained of; and of this it puts itself upon the country.

J. W. TERRY,
GOODWIN & GOODWIN,
Att'ys for Defendant.

Endorsed: No. 796. In the justice court of Coleman county, State of Texas. P. Johnson & Son *vs.* Gulf, Colo. & Santa Fé R'y Co. Def't's original answer. Filed Sept. 23d, 1890. T. W. White, justice of the peace. # 248. Filed this 24th day of Oct., 1890. H. D. Walker, clerk county court, Coleman county, Texas.

Motion to Strike Out Def't's Answers. Filed July 8, 1891.

In County Court of Coleman County, Texas, May Term, 1891.

P. JOHNSON & SON
vs.
THE GULF, COLORADO & SANTA FÉ R'Y Co.

Now comes the plaintiff- in the above-entitled cause and moves the court to strike out a paper filed among the papers in this cause and endorsed:

15 No. 248. No. 796. In the justice court of Coleman county, State of Texas. P. Johnson & Son *vs.* Gulf, Colo. & Santa Fé R'y Co. Defendant's original answer. Filed Sept. 23rd, 1890. Signed T. W. White, justice of the peace. Filed this 24th day of Oct., 1890. H. D. Walker, clerk county court, Coleman county, Texas,

for the following reasons, to wit:

First. Because said paper is not properly a filed paper in this cause for the reason that same was filed in the justice court of precinct No. 1, Coleman county, Texas, after the defendant, though present in the person of T. J. Brien, its local agent, refused to ans-er in said cause, and after judgment by default had been taken and judgment entered under the proof, and no motion for a new trial had been made nor no new trial asked or granted.

Second. Because the 2d clause in said paper, purporting to be a special exception, is a plea in abatement, and not filed in the due order of pleading coming after a general exception to plaintiffs' cause of action, and is not verified by affidavit, as is required by law.

16 Third. Because said paper, not having been filed and urged in the justice court as an answer to plaintiffs' cause of action, cannot be considered or urged as an answer in this court. Wherefore, the premises considered, the plaintiffs moves the court to strike from the records in this case said paper.

T. H. STRONG,
Att'y for Plaintiffs.

Endorsed: Filed 8th day of July, 1891. H. D. Walker, clerk county court, Coleman county, Texas.

Order on Motion to Strike Out Def't's Answer, Oct. 15th, 1891.

P. JOHNSON & SON
vs.
GULF, COLORADO & SANTA FÉ R'Y CO. } No. 248.

THURSDAY, *Oct. 15th*, 1891.

This day came on to be heard the motion of plaintiffs to strike out the original answer of def't filed in the justice's court of precinct No. 1, Coleman county, Texas, on the 23d day of September, 1890; and the same being considered by the court and argument of counsel *pro* and *con.* being heard, the court is of the opinion that the law is with the plaintiffs. It is therefore ordered by the court that said motion be sustained, and that the said original answer of defendant filed in justice's court on the 23d day of September, 1890, be, and the same is hereby, stricken from the records in this

17 cause; to which action of the court the defendant then and there excepted.

Motion to Strike Out Def't's 1st Amended Original Answer. Filed 7th Oct., 1891.

In County Court of Coleman County, Texas, October Term, 1891.

P. JOHNSON & SON
vs.
THE GULF, COLORADO & S. FÉ R'Y CO. } No. 248.

Now comes the pl'ffs, by attorney, and moves the court to strike from the record in this cause endorsed and styled:

No. 248. P. Johnson & Son *vs.* Gulf, Colo. & Santa Fé R'y Co. In the county court of Coleman county, State of Texas. Defendant's first amended original answer. Filed the 9th day of July, 1891, by H. D. Walker county clerk of Coleman county, Texas,

for the following reasons, to wit:

1st. Because the same purports to be an amendment filed in lieu of the def't's original answer filed in the justice's court of precinct No. 1, Coleman county, Texas, on the 23d day of Sept., 1890, when in truth and in fact there was no answer filed in said justice's court until after judgment had been entered for pl'ffs, and the said original answer in said justice's court was improperly filed and is not a proper paper in this cause; and said original answer not being a properly filed paper in this cause, the same has no force, and
18 the court cannot permit it to be amended so as to give it any force; and there being no original answer, there can be no amendment of an original answer or no substitute in lieu of the original answer. Wherefore, the premises considered, pl'ffs moves that 1st amended original answer be stricken from the record in this cause.

T. H. STRONG,
Att'y for Pl'ffs.

Endorsed: Filed this 7th day of Oct., 1891. H. D. Walker, clerk county court, Coleman county, Texas.

Order on Motion to Strike Out Def't's 1st Amended Original Answer, Oct. 15th, 1891.

P. JOHNSON & SON
vs.
GULF, COLORADO & SANTA FÉ R'Y CO. } No. 248.

THURSDAY, *Oct. 15th*, 1891.

This day came on to be heard the motion of plaintiffs to strike out the first amended original answer filed in this court on the 9th day of July, A. D. 1891, amending its original answer filed in the justice's court on the 23d day of December, 1890, and the same being considered by the court, and the argument of counsel *pro* and

con. being heard, the court is of the opinion that the law is with the plaintiffs. It is therefore ordered by the court that said motion be sustained, and that the said first amended original answer of
19 defendant filed in this cause in this court on the 9th day of July, A. D. 1891, be, and the same is hereby, stricken from the records in this cause; to which action of the court the defendant then and there excepted.

Pl'ffs' 1st Supplemental Petition or Claim. Filed July 9th, 1891.

In County Court of Coleman Co., Texas, July Term, A. D. 1891.

P. JOHNSON & SON
vs.
THE GULF, COLORADO & SANTA FÉ R'Y CO. } No. 249.

Now comes the plaintiffs in the above-entitled cause, by their attorney, leave of the court being first had and obtained, and file this *his* 1st supplemental petition, and, by way of replication to the matters and things plead in the defendant's original answer filed in this cause on the 9th day of July, A. D. 1891, excepts to that portion of said answer wherein the defendant pleads the interstate commerce powers of Congress and the interstate commerce laws of the United States, known as "An act to regulate commerce," &, for exception, says that said plea is in the nature of a plea to the jurisdiction of this court, and is not filed in the due order of pleading, coming after general & special exceptions to plaintiffs' claim.

2. And, further specially excepting to said plea, plaintiffs say that this court should not take cognizance of said plea,
20 and that the same is insufficient in law, in this, it is not aver-ed in said plea that the statute of the State of Texas under which this action was brought is in violation of the interstate commerce law of the United States.

And, further specially excepting to said plea, plaintiffs say that this court ought not to take further cognizance of said plea for the reason that this case was originally brought and commenced in the justice's court of precinct No. 1, Coleman county, Texas, and judgment rendered in said court by default upon proof of plaintiffs' claim, and no answer was filed in said justice's court by the defendant until after judgment was rendered in favor of plaintiff-; that the matters herein plead *was* not plead in said justice's court at the time of trial and judgment, and that the same is plead here for the first time, and, being new matter, should be not entertained by this court.

Wherefore plaintiffs pray judgment of the sufficiency of said plea and answer, and that *he* have judgment as claimed in this *his* original claim filed in justice's court.

T. H. STRONG,
Att'y for Plaintiffs, P. Johnson & Son.

Indorsed: Filed this 9th day of July, 1891. H. D. Walker, clerk county court, Coleman county, Texas.

21 *Order on Plaintiffs' Three Special Exceptions to Def't's Original Answer, October 15th, 1891.*

P. JOHNSON & SON
vs.
GULF, COLORADO & SANTA FÉ R'Y CO. } No. 248.

THURSDAY, *Oct. 15th*, 1891.

This day came on to be heard the plaintiffs' three special exceptions to defendant's original answer, filed in this cause on the 9th day of July, A. D. 1891, and the same being considered by the court, and after hearing the argument of counsel, the court is of the opinion that the law is with the defendant. It is therefore ordered that said exceptions be, and the same *is* hereby, overruled; to which action of the court the plaintiffs then and there excepted.

Bill of Exceptions No. 1. Filed Oct. 23d, 1891.

In County Court, October Term, A. D. 1891.

P. JOHNSON & SON
vs.
G., C. & S. FÉ R'Y CO. } No. 248.

Be it remembered that on the trial of the above numbered and entitled cause in said court, at October term thereof, 15th day of October, A. D. 1891, the plaintiffs, to maintain the issues on *his* part, made and presented to the court the motion of the plaintiffs to strike out the defendant's original answer filed among the papers in this cause, filed in the justice's court September 23d, 1890, from which this cause was appealed to this court and afterwards filed in this court October 24th, 1890, for the reasons stated and set
22 forth in said motion, which is referred to and made a part hereof, and which motion was heard, considered, and sustained by the court and the said defendant's original answer struck out from the records of this cause; to which ruling and action of the court defendant then and there excepted, and here tenders *his* bill of exceptions No. 1 and asks that same be signed and made a part of the records in this cause, which is accordingly done.

H. A. ORR, *Judge.*

Indorsed: Filed 23d day of Oct., 1891. H. D. Walker, clerk.

Bill of Exceptions No. 2. *Filed Oct.* 23*d*, 1891.

In County Court, October Term, A. D. 1891.

P. JOHNSON & SON
vs.
G., C. & S. FÉ R'Y CO. } No. —.

Be it remembered that on the trial of the above numbered and entitled cause in said court, at October term thereof, 15th day of October, A. D. 1891, the plaintiffs, to maintain the issues on *his* part, made and presented to the court the plaintiffs' motion to strike out from the records in this cause the defendant's first amended original answer, filed in this said cause in this court July 9th, 1891, for the reasons stated and set forth in said motion; which motion is
23 here referred to and made a part hereof, and which motion was heard and sustained by the court, and the defendant's said first amended original answer was struck from the records in this cause; to which ruling and action of the court defendant then and there excepted, and here tenders *his* bill of exceptions No. 2 and asks that same be signed and made a part of the records in this cause, which is accordingly done.

H. A. ORR, *Judge.*

Indorsed: Filed 23d day of Oct., 1891. H. D. Walker, clerk.

Bill of Exceptions No. 3. *Filed Oct.* 23*d*, 1891.

In County Court, October Term, A. D. 1891.

P. JOHNSON & SON
vs.
G., C. & S. FÉ R'Y CO. } No. 248.

Be it remembered that on the trial of the above numbered and entitled cause in said court, at October term thereof, 15th day of October, A. D. 1891, the defendant, to maintain the issues on its part, made and presented to the court the defendant's general and special exceptions in defendant's answer filed herein to the plaintiffs' claim or petition filed herein (before an announcement of ready upon the merits of the case) upon the grounds stated and set out in the defendant's exceptions in its said answer; which peti-
24 tion or claim of plaintiffs and said answer of defendant, for the purpose of this bill of exception, are here referred to and made a part hereof, and which exceptions were by the court overruled; to which ruling and action of the court defendant then and there excepted, and here tenders *his* bill of exceptions No. 3 and asks that same be signed and made a part of the records in this cause, which is accordingly done.

H. A. ORR, *Judge.*

Indorsed: Filed 23d day of Oct., 1891. H. D. Walker, clerk.

Bill of Exceptions No. 4. Filed Oct. 23d, 1891.

In County Court, October Term, A. D. 1891.

P. JOHNSON & SON
vs.
G., C. & S. FÉ R'Y CO. } No. —.

Be it remembered that on the trial of the above numbered and entitled cause in said court, at October term thereof, and the 15th day of October, A. D. 1891, the plaintiffs, to maintain the issues on their part, offered and read in evidence a certain instrument in writing, over the objections of defendant, as follows, and filed herein October 24th, 1890, which is hereto attached and made a part hereof, headed and marked and printed thereon the words
25 Freight contract of Ohio & Mississippi Railway Company; to the introduction of which instrument in evidence the defendant then and there objected for the following reasons:

1st. Because same was not made, executed, or given by this defendant, nor was same executed by any one authorized by defendant to execute or give same.

2nd. Same shows upon its face to be a bill of lading for an interstate shipment and not such a bill of lading as would authorize a penalty under the laws of this State or of the United States for overcharges.

3d. Same is irrelevant and immaterial.

4th. Neither the weight of the goods nor the amount of the freight or charges are stated therein; which objection was overruled by the court; to which ruling and action of the court defendant then and there excepted, and here tenders *his* bill of exceptions No. 4, and asks that same be signed and made a part of the records in this cause, which is accordingly done.

Freight Contract with O. & M. R'y Co. Filed Oct. 24th, 1890.

Freight contract of Ohio & Mississippi Railway Company over its own line, with through rates to all points on other lines North, West, and South.

26 Wm. Duncan, general freight agent, St. Louis; H. Coope, contracting agent, Cincinnati, O.

Contracting offices, 159 Walnut street and 48 West Fourth street, Cincinnati, O.

CINCINNATI, *Aug.* 2, 1890.

Received from Spiral Spring Buggy Co. by Ohio & Mississippi Railway Company the property described below in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to the said destination, if on its

road; otherwise to deliver to another carrier on the route to said destination.

It is mutually agreed, in consideration of the rate of freight hereinafter named, as to each carrier of all or any of said property over all or any portion of said route to destination and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all conditions, whether printed or written, herein contained, and which are hereby agreed to by the shipper and by him accepted for himself and his assigns as just and reasonable.

Upon all the conditions, whether printed or written, herein contained, it is mutually agreed that the rate of freight from Cin'ti to Coleman, Tex., is to be in cents per 100 lbs.—

27

If — times first class.	If first class.	If second class.	If third class.	If fourth class.	If fifth class.	If sixth class.	If special—	
							Class.	Rate.
202½								

And advanced charges at —— $— 100.

Marks, consignee, and destination.	Description of articles.	Weight, subject to correction.
1935 —— 3819 Johnson & Son, Coleman, Tex.	One top phaeton..... 1 set wheels. " pair shafts. K. D. & crtd.	X.

[Written across face:] Via A., T. & S. F. R'y. Owner's risk.

Conditions.

1. No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto by causes beyond its control or by floods or by fire from any cause wheresoever occurring or by riots, strikes, or stoppage of labor or by leakage, breakage, chafing, loss in weight, changes in weather, heat, frost, wet, or decay or from any cause if it be necessary or is usual to carry such property upon open cars.

2. No carrier is bound to carry said property by any particular train or vessel or in time for any particular market or otherwise than with as reasonable despatch as its general business will permit. Every carrier shall have the right, in case of necessity, to forward said property by any railroad or route between the point of shipment and the point to which the rate is given.

28 3. No carrier shall be liable for loss or damage not occurring on its own road or its portion of the through route, nor

after said property is ready for delivery to the next carrier or to consignee. The amount of any loss or damage for which any carrier becomes liable shall be computed at the value of the property at the place and time of shipment under this bill of lading unless a lower value has been agreed upon or is determined by the classification upon which the rate is based, in either of which events such lower value shall be the maximum price to govern such computation. Claims for loss or damage must be made in writing to the agent at point of delivery promptly after arrival of the property and if delayed for more than thirty days after the delivery of the property or after due time for the delivery thereof no carrier hereunder shall be liable in any event.

4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be carried hereunder shall have the privilege, at its own cost, of compressing the same for greater convenience in handling and forwarding, and shall not be held responsible for unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is an elevator may (unless otherwise expressly noted herein and then if it is not promptly unloaded) be there delivered and placed with other grain of same kind without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder. No carrier shall be liable for differences in weights or for shrinkage of any grain or seed carried in bulk.

5. Property not removed by the person or party entitled to receive it within twenty-four hours after its arrival at destination may be kept in the car, depot, or place of delivery of the carrier at the sole risk of the owner of said property, or may be, at the option of the carrier, removed and otherwise stored at the owner's risk and cost, and held there subject to lien for all freight and other charges. The delivering carrier may make a reasonable charge per day for the detention of any car and for use of track after the car has been held forty-eight hours for unloading, and may add such charge to all other charges hereunder, and hold said property subject to a lien therefor. Property destined to or taken from a station at which there is no regularly appointed agent shall be entirely at risk of owner when unloaded from cars or until loaded into cars, and when received from or delivered on private or other sidings shall be at owner's risk until the cars are attached to and after they are detached from trains.

6. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the pulished classifications unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

7. Every party, whether principal or agent, shipping inflammable, explosive, or dangerous goods without previous full-written disclosure to the carrier of their nature shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

8. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading shall be void.

9. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than the name of a party to be notified of the arrival of the property the surrender of the bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading.

10. Owner or consignee shall pay freight at the rate above
31 stated, and all other charges accruing on said property before delivery and according to weights as ascertained by any carrier hereunder, and if upon inspection it is ascertained that the articles shipped are not those described in this bill of lading the freight charges must be paid upon the articles actually shipped and at the rates and under the rules provided for by published classifications.

11. If all or any part of said property is carried by water over any part of said route such water carriage shall be performed subject to the conditions, whether printed or written, contained in this bill of lading, including the condition that no carrier or party shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters, or from explosion, bursting of boilers, breaking of shafts, or any latent defect in hull, machinery, or appurtenances, or from collision, stranding, or other accidents of navigation, or from the prolongation of the voyage; and any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and to assist vessels in distress, and to deviate for the purpose of saving life or property; and any carrier by water liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of
32 said property.

H. COOPE, *Agent.*

This bill of exception is given with this qualification: At the time the objection was raised to the introduction of the bill of lading the plaintiffs withdrew said bill of lading and offered proof of the weight of the buggy, being the expense bill issued by the defendant, and oral testimony that the J. T. Brien, station agent of def't, weighed said buggy, and it weighed 530 lbs, as specified on in the expense bill, weighed on def't's scales. Then plaintiffs reoffered said bill of lading, and the same was then admitted as evidence over the objections of def'ts, as above set out.

H. A. ORR,
Co. Judge Presiding.

Endorsed: Filed 23d day of Oct., 1891. H. D. Walker, clerk.

Order Overruling Exception of Def't to Pl'ffs' Complaint, Oct. 15th, 1891.

P. JOHNSON & SON
vs.
GULF, COLORADO & SANTA FÉ R'Y CO. } No. 248.

On this 15th day of October, A. D. 1891, before the trial on its merits came on to be heard the general and special exceptions of defendant, Gulf, Colorado & Santa Fé R. R. Co., filed in this court July 9th, 1891, to plaintiffs' complaint herein filed 24th October, 1890, and in justice court September 16th, 1890, which gen-
33 eral & special exceptions were considered by the court, and same were by the court overruled; to which action and ruling of the court defendant then and there excepted in open court.

Judgment of the Court, Oct. 15th, 1891.

P. JOHNSON & SON
vs.
G., C. & S. F. R'Y CO. } No. 248.

This day, October the 15th, A. D. 1891, this cause being regularly reached and called for trial, came both parties, by their attorneys, and announced ready for trial, and, no jury being demanded, all matters of fact as well as of law were submitted to the court, and after hearing the evidence and argument of counsel the court is of the opinion that the plaintiffs should recover their damages against the defendant, The Gulf, Colorado & Santa Fé R'y Co., by occasion of the premises, and now here assesses the plaintiffs' damages at the sum of seventy-five & $\frac{11}{100}$ dollars.

It is therefore considered, adjudged, and decreed by the court that the plaintiffs, P. Johnson & Son, do have and recover of and from the defendant, The Gulf, Colorado & Santa Fé Railway Co., the said sum of seventy-five $\frac{11}{100}$ dollars, with interest thereon from this date at the rate of six per centum per annum, together with all costs in this behalf expended, and that the plaintiffs have their execution.

34 It is further ordered by the court that each party hereto pay all the costs by him in this behalf expended, for which execution may issue in favor of the party entitled thereto; to which conclusion of the law and facts found by the court & filed herein and to this judgment of the court the defendant in open court excepted.

Conclusion of Facts & of Law. Filed Oct. 28th, 1891.

In County Court, Coleman Co., Texas, Oct., 1891.

P. JOHNSON & SON
vs.
GULF, COLORADO & SANTA FÉ R. R. Co.

Conclusions of fact in the above entitled and numbered case, to wit:

I find that on the 2 day of Aug., 1890, there was shipped from Cincinnati, State of Ohio, by the Spiral Spring Buggy Co., one buggy or phaeton consigned to P. Johnson and Son at Coleman, State of Texas; that the Ohio and Mississippi R. R. Co. gave to the consignor a through bill of lading in which they agreed to deliver said buggy to consignees for the specified rate, $2.02½ per hundred pounds weight, and that the buggy weighed 530 lbs., and that the freight charges of said buggy at the rate specified in the bill of lading of $2.02½ would amount to $10.73. I find that the buggy or
35 phaeton was in the possession of the def't, Gulf, Colorado and S. F. R. R. Co., under the said bill of lading, on the 11th day of Oct., 1890, and on said day the buggy was weighed by def't's agent, J. T. Brien, at Coleman, Texas, and that the weight was 530 lbs.; that on said 11th day of Aug., 1890, *that* plaintiffs tendered and offered to pay to the def't's agent at Coleman, Texas, $10.73, the amount shown to be due by the bill of lading, and demanded the buggy or phaeton, and that the def't refused to accept said amount as offered by plaintiffs for said buggy, but demanded a greater rate than that specified in the bill of lading, to wit, the sum of 2.87\frac{3}{10}$ per hundred lbs.

That the def't kept said buggy for 7 days after the tender of payment of the freight charges as specified in the bill of lading. At $10.73 per day for seven days would amount to $75.11, the $10.75 being the amount due as shown by the bill of lading.

Conclusions of Law.

That the act of May 6th, 1882, of the legislature of the State of Texas, under which that suit was brought, is constitutional, and not an infringement upon the powers of Congress of the United States in the regulation of interstate commerce, but an exercise of the police powers of the State. It neither fixes -or regulates any rate; it makes no discrimination between commerce whol-y —
36 the State and that between the State or *or* other States; it imposes no duty upon any carrier not already imposed by the common law; it applies to all railroad Cos. in the State and to all contracts of carriage alike, and merely provides a penalty for the purpose of enforcing a compliance with an obligation which already existed at common law.

2. That def't being in the possession of the buggy under the bill of lading or freight contract which bound the company to deliver the buggy at the rate specified in the bill of lading, to wit, $2.02½ per one hundred lbs., it was its duty to deliver same on payment or tender of payment of freight charges as specified in the through bill of lading, calculated on the actual weight of the buggy, and it was the duty of the def't to weigh said buggy, to ascertain said weight, and on its failure to deliver its goods it should respond to plaintiffs in damages to the amount shown to be due for each day it retained possession of said buggy after the tender of the freight charges as shown to be due under the bill of lading.

Applying the facts as found to the law, I conclude that plaintiffs should recover damages to the amount of $75.11, and interest from date of judgment at the rate of 6 per cent. per annum and costs, and render judgment accordingly.

H. A. ORR,
County Judge.

37 Filed this 28th day of October, 1891.

H. D. WALKER,
Clerk County Court, Coleman County, Texas.

38 *Writ of Error Bond. Filed Dec. 3rd,* 1891.

Know all men by these presents that we, The Gulf, Colorado and Santa Fé Railway Company, as principal, and Alexander T. Britton and Aldis B. Browne, as sureties, are held and firmly bound unto P. Johnson & Son in the full and just sum of two hundred ($200) dollars to be paid to the said P. Johnson & Son, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a county court of Coleman county, Texas, in a suit depending in said court between P. Johnson & Son, plaintiffs, and The Gulf, Colorado and Sante Fé Railway Company, defendant, a judgment was rendered against the said defendant, The Gulf, Colorado & Santa Fé Railway Company, and the said defendant, The Gulf, Colorado and Santa Fé Railway Company, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said P. Johnson and Son, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said defendant, The Gulf, Colorado & Santa Fé Railway Company, shall prosecute its writ of error to effect and answer all damages

and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY *COMPANY*,
By J. W. TERRY, *Sol. for Tex.* [SEAL.]
ALEXANDER T. BRITTON. [SEAL.]
ALDIS B. BROWNE. [SEAL.]

Sealed and delivered in presence of—
—— ——.

I, Jno. M. Bird, secretary of the Gulf, Colorado & Santa Fé Railway Company, hereby certify that J. W. Terry is the officer authorized by said company to sign for it all writ of error bonds, and hereby attest his signature hereto with the seal of said company.
[SEAL.] (Signed) JOHN M. BIRD, *Secretary.*

Approved by—
(Signed) L. Q. C. LAMAR,
Associate Justice of the U. S.,
Assigned to Fifth Circuit.

The writ to operate as a supersedeas.

[Endorsed:] Copy.
39 Endorsed: No. 248. P. Johnson & Son *vs.* G., C. & S. F. R'y Co. Filed this 3d day of Dec'r, 1891. H. D. Walker, clerk county court, Coleman county, Texas.

Writ of Error. Filed Dec. 3rd, 1891.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judge of the county court of Coleman county, Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said county court of Coleman county, Texas, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between P. Johnson & Son, plaintiffs, and The Gulf, Colorado and Santa Fé Railway Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity,
40 or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title,

right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, The Gulf, Colorado and Santa Fé Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twenty-seventh day of November, in
41 the year of our Lord one thousand eight hundred and ninety-one.

(Signed) JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

(Signed) L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the U. S.,
Assigned to the Fifth Circuit.

Endorsed: No. 248. P. Johnson & Son *vs.* G., C. & S. F. R'y Co. Filed this 3d day of Dec'r, 1891. H. D. Walker, clerk county court, Coleman county, Texas.

Bill of Costs.

Docketing cause	10
Entering appearance	10
" 4 continuances	40
Filing 20 papers	1 00
Docketing 2 motions	20
Entering 2 orders on motions	1 00
Final order	50
Assessing damages	50
Swearing 1 witness	10
Issuing execution	50
Entering sh'ff's return on execution	50
Taxing costs & copy	25
Transcript of orders & papers herein	18 00
Total clerk's fees	$23 15

42 *Sh'ff's Costs.*

Jury tax	50
Transcript from justice court, prec't #1	3 50
Judge's fees	3
Grand total costs	$30 15

I hereby certify the above to be a true and correct copy of the costs in the above entitled and numbered cause.

[L. S.] H. D. WALKER,
Clerk County Court, Coleman Co., Texas.

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Coleman. }

P. JOHNSON & SON
vs.
THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY. } No. 201.

I, H. D. Walker, clerk of the county court in and for Coleman county, Texas, do hereby certify that the foregoing forty-one & $\frac{5}{16}$ pages of writing contain a true copy of all the proceedings in the cause No. 201, styled P. Johnson & Son *vs.* The Gulf, Colorado & Santa Fé Railway Company, as now appear of record and among the papers in said cause now on file in the office of the county clerk of Coleman county, Texas.

Witness my hand and the impress of the seal of the county
43 court of said county, at office, in *in* the town of Coleman, Texas, this the 3rd day of December, A. D. 1891.

[Seal of County Court of Coleman County, Texas.]

H. D. WALKER,
Clerk County Court, Coleman Co., Texas.

44 [Endorsed:] No. 1986. No. —. Assignment. Gulf, Colorado and Santa Fé Railway Company, appellant, plaintiffs in error, *vs.* P. Johnson & Son, appellee-, defendants in error. From the county court of Coleman county, Texas. Applied for by Britton & Gray, att'ys, on the 3d day of December, A. D. 1891, and delivered to Sims & Snodgrass on the 4th day of December, 1891. (Seal.) H. D. Walker, clerk of the county court, Coleman county, Texas.

45 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judge of the county court of Coleman county, Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said county court of Coleman county, Texas, before you, being the highest court of law or equity of the said State in which a decision could be had in said suit between P. Johnson & Son, plaintiffs, and The Gulf, Colorado and Santa Fé Railway Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Consti-
46 tution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said defendant, The Gulf, Colorado and Santa Fé Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and ninety-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the U. S.,
Assigned to the Fifth Circuit.

47 UNITED STATES OF AMERICA, *ss*:

The President of the United States to P. Johnson & Son, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the county court of Coleman county, Texas, wherein The Gulf, Colorado and Santa Fé Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable L. Q. C. Lamar, associate justice of the Supreme Court of the United States, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and ninety-one.

L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the U. S.

48 On this 3rd day of December, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared F. L. Snodgrass before me, the subscriber, E. A. Lindsey, a notary public in and for Coleman county, Texas, and makes oath that he delivered a true copy of the within citation to T. H. Strong, who is the attorney of record of the within-named P. Johnson & Son, defendants in error.

F. L. SNODGRASS, *Affiant.*

Sworn to and subscribed the 3rd day of December, A. D. 1891, by the said F. L. Snodgrass, affiant.

[Seal of Notary Public, County of Coleman, Texas.]

E. A. LINDSEY,
Notary Public, Coleman Co., Tex.

Endorsed on cover: Case No. 14,944. Texas Coleman county court. Term No., 350. The Gulf, Colorado & Santa Fé Railway Company, plaintiff in error, *vs.* P. Johnson & Son. Filed December 11, 1891.

Supreme Court of the United States.

October Term, 1903.

GULF, COLORADO & SANTA FE RAILWAY CO.,

Plaintiff in Error,

vs.

P. JOHNSON & SON,

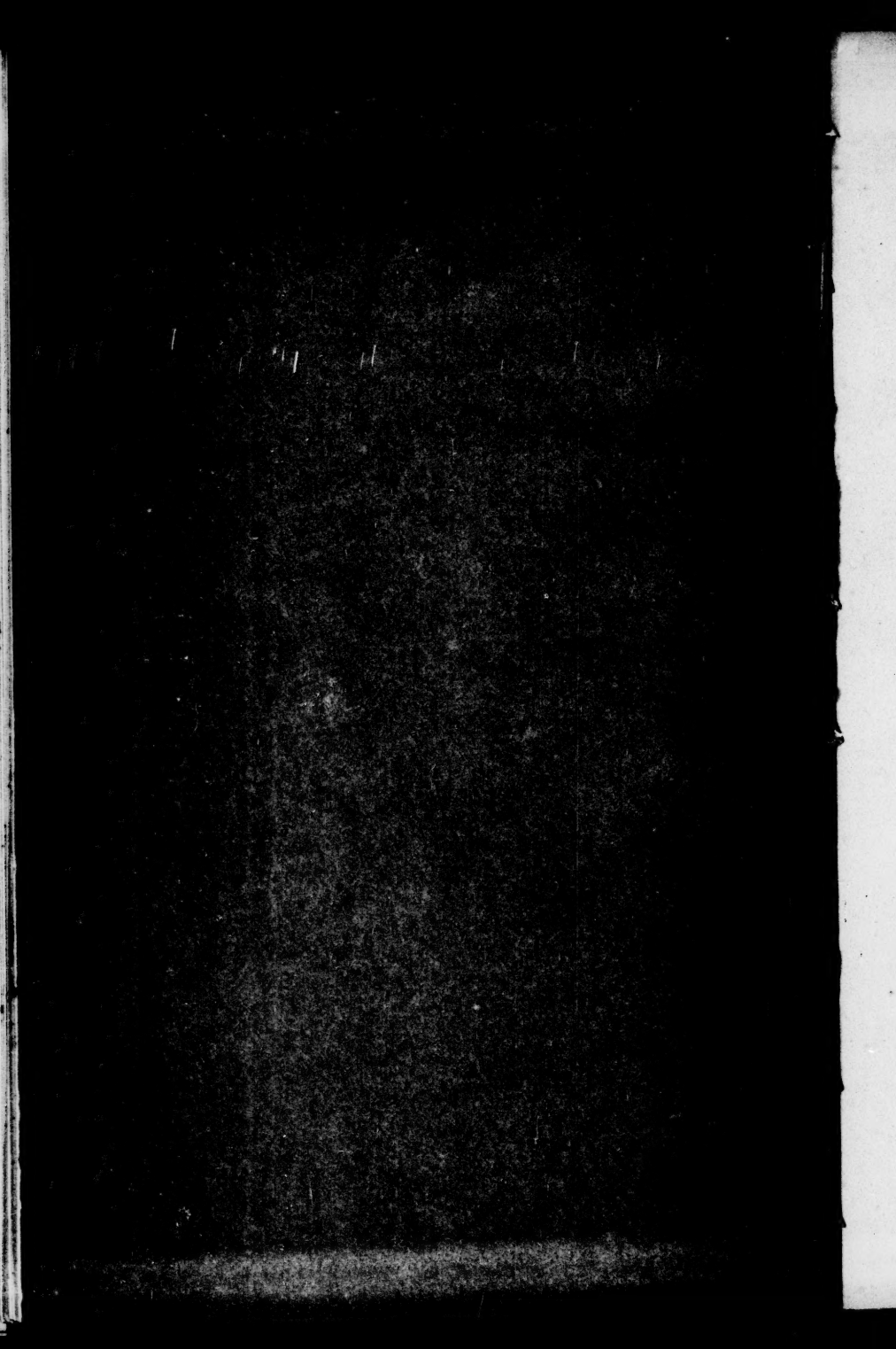
In Error to the County Court of [illegible] County, Texas.

BRIEF FOR PLAINTIFF IN ERROR.

GEO. S. PECK,
General Solicitor.

A. T. BRITTAIN,
A. S. [illegible],
J. W. [illegible],
Attys. for Plaintiff in Error.

WASHINGTON, D. C.
Gibson Bros., Printers and Bookbinders.
1903.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

GULF, COLORADO & SANTA FÉ RAILWAY CO.,
PLAINTIFF IN ERROR,
v.
P. JOHNSON & SON.

No. 350.

In Error to the County Court of Coleman County, Texas.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

An Act of the Legislature of Texas, approved May 6, 1882 (Appendix), makes the rate of charge named in a railroad bill of lading conclusive; requires the railroad company to deliver the property transported thereunder upon payment of the charges shown thereby, and imposes penalty for every day such property is withheld by the carrier "to an amount equal to the amount of the freight "charges, after payment or tender of payment of such "charges due, as shown by the bill of lading."

Thereunder, and without alleging any *actual* damage, defendants in error brought suit in Justice Court, Precinct No. 1, of Coleman County, to recover for seven days' delay in failing to deliver a phaeton shipped to them from Cincinnati, Ohio. Judgment was rendered against the company therein for $\$75\frac{11}{100}$, and appeal thence taken to the County Court. Therein, upon trial *de novo*, the company plead (1) that the complaint was insufficient because not showing that the bill of lading sued on was issued by its authority or consent or was ever adopted or ratified by it, and (2) that, the shipment being plainly interstate, the statute of Texas, *supra*, under which recovery was sought was invalid if held applicable thereto, because in conflict with the Federal Interstate Commerce Act. Its pleas were overruled and judgment rendered against it for $\$75\frac{11}{100}$ and costs. That sum being below the jurisdictional amount ($100) necessary to carry the case to the Supreme Court of that State, this writ of error, direct from the trial Court, was properly allowed, being from "A final judgment * * * in the highest Court of the "State in which a decision in the suit could be had." * * * (U. S. R. S., Sec. 709.)

The facts were found by the County Court as follows (R. 18):

"I find that on the 2 day of Aug., 1890, there was "shipped from Cincinnati, State of Ohio, by the Spiral "Spring Buggy Co., one buggy or phaeton consigned to "P. Johnson and Son at Coleman, State of Texas; that "the Ohio and Mississippi R.R. Co. gave to the consignor "a through bill of lading in which they agreed to deliver "said buggy to consignees for the specified rate, $\$2.02\frac{1}{2}$ "per hundred pounds weight, and that the buggy weighed "530 lbs., and that the freight charges of said buggy at "the rate specified in the bill of lading of $\$2.02\frac{1}{2}$ would "amount to $10.73. I find that the buggy or phaeton

" was in the possession of the def't, Gulf, Colorado and " S. F. R.R. Co., under the said bill of lading, on the 11th " day of Oct., 1890, and on said day the buggy was " weighed by def't's agent, J. T. Brien, at Coleman, Texas, " and that the weight was 530 lbs.; that on said 11th day " of Aug., 1890, *that* plaintiffs tendered and offered to " pay to the def't's agent at Coleman, Texas, $10.73, the " amount shown to be due by the bill of lading, and de- " manded the buggy or phaeton, and that the def't refused " to accept said amount as offered by plaintiffs for said " buggy, but demanded a greater rate than that specified " in the bill of lading, to wit, the sum of $2.87 3/10 per " hundred lbs.

" That the def't kept said buggy for 7 days after the " tender of payment of the freight charges as specified in " the bill of lading. At $10.73 per day for seven days " would amount to $75.11, the $10.75 being the amount " due as shown by the bill of lading."

And the Court's conclusion of law upon the question involved is as follows (R. 18):

" That the Act of May 6th, 1882, of the Legislature of " the State of Texas, under which that suit was brought, " is constitutional, and not an infringement upon the " powers of Congress of the United States in the regu- " lation of interstate commerce, but an exercise of the " police powers of the State. It neither fixes or regulates " any rate; it makes no discrimination between com- " merce wholly — the State and that between the State or " *or* other States; it imposes no duty upon any carrier " not already imposed by the common law; it applies to " all railroad Cos. in the State and to all contracts of " carriage alike, and merely provides a penalty for the " purpose of enforcing a compliance with an obligation " which already existed at common law."

To the introduction of the bill of lading in evidence plaintiff in error objected upon the grounds stated *supra* (R. 13).

ASSIGNMENT OF ERRORS.

The Court below erred in holding said State Act *supra* applicable to this case and in rendering judgment against plaintiff in error thereon.

ARGUMENT.

From the standpoint of plaintiff in error the case at bar presents plain conflict between the Act of Congress approved February 4, 1887 (24 Stats., p. 379), entitled "An Act to regulate commerce," and the Act amendatory thereof, approved March 2, 1889 (25 Stats., p. 855), and the provisions of a certain Act of the Legislature of the State of Texas printed in full in the appendix hereto.

By section six of the Federal Acts *supra*, regulating interstate commerce, every common carrier is required to print and publicly post at each station upon its route the schedules of rates and fares for carriage of passengers and property thereon, for the inspection and information of the public. No advance in such rates or fares can be made except upon previous public notice of ten days' durration, nor reduction therein except upon like public notice of three days' duration. The section further provides:

"And when any such common carrier shall have es-
" tablished and published its rates, fares, and charges in
" compliance with the provisions of this section, it shall
" be unlawful for such common carrier to charge, demand,
" collect, or receive from any person or persons a greater
" or less compensation for the transportation of passen-
" gers or property, or for any services in connection there-
" with, than is specified in such published schedule of
" rates, fares, and charges as may at the time be in force."

By section ten of said Act severe penalty by both fine and imprisonment is imposed for violation of the law in this respect.

By the statute of the State of Texas here in question, the freight charges, "as shown by the bill of lading," is made conclusive, and upon refusal of the carrier to deliver the goods, wares, or merchandise upon payment or tender of the freight charges as thus shown by the bill of lading,

"the said railroad company shall be liable in damages to
"the owner of said freight, goods, wares, or merchandise,
"to an amount equal to the amount of the freight charges
"for every day said freight, goods, wares, and merchandise
"is held after payment, or tender of payment, of the
"charges due, as shown by the bill of lading, to be re-
"covered in any court of competent jurisdiction."

The question thus sharply presented is, whether, upon an interstate shipment, the carrier is bound to observe the Interstate Commerce Act of Congress, making the published tariff rate then in force alone controlling (irrespective of the rate and charges stated upon the bill of lading), or the stated act of the State Legislature making the rate and charges appearing upon the bill of lading conclusive, and imposing heavy penalty for failure to deliver the goods upon payment or tender of the amount thereof. The Federal law ignores the bill of lading and makes the published tariff rate conclusive, imposing heavy penalty for any variance therefrom. The statute of the State ignores the published interstate tariff of rates and makes the rate and sum "specified in the bill of lading" conclusive, imposing heavy damages upon the carrier, at the suit of the owner, for violation of the statute.

The Constitution, Art. 1, Sec. 8, provides that—

"The Congress shall have power * * * to regu-
" late commerce with foreign nations and among the
" several States, and with the Indian tribes."

This grant of power is exclusive whenever the subject-matter, as here, falls within its plain operation. In *Welton* v. *Missouri* (91 U. S. 275–280) this Court held:

"It will not be denied that that portion of commerce
" with foreign countries and between the States which
" consists in the transportation and exchange of commodi-
" ties is of national importance, and admits and requires
" uniformity of regulation. The very object of investing
" this power in the General Government was to insure this
" uniformity against discriminating State legislation."

In *Wabash, &c., Railway Company* v. *Illinois* (118 U. S. 557), a statute of that State which sought to impose upon interstate commerce a regulation of the charges made for such transportation in that State was held to be forbidden by the Federal Constitution, and hence invalid. In the exhaustive opinion rendered therein this Court said (p. 575):

"We must, therefore, hold that it is not, and never has
" been, the deliberate intention of a majority of this Court
" that the statute of a State which attempts to regulate
" the affairs and charges of railroad companies within its
" limits, for a transportation which constitutes a part of
" commerce among the States, is a valid law."

And, again, page 577:

"As restricted to a transportation which begins and
" ends within the limits of the State it may be very just
" and equitable, and it certainly is the province of the
" State Legislature to determine that question. But when
" it is attempted to apply to transportation through an
" entire series of States a principle of this kind, and each

" one of the States shall attempt to establish its own rates " of transportation, its own methods to prevent discrimi- " nation in rates, or to permit it, the deleterious influence " upon the freedom of commerce among the States and " upon the transit of goods through those States cannot " be overestimated. That this species of regulation is " one which must be, if established at all, of a general " and national character, and cannot be safely and wisely " remitted to local rules and local regulations, we think " is clear from what has already been said. And if it be " a regulation of commerce, as we think we have demon- " strated it is, and as the Illinois Court concedes it to be, " it must be of that national character, and the regulation " can only appropriately exist by general rules and prin- " ciples which demand that it should be done by the " Congress of the United States under the commerce " clause of the Constitution."

Subsequent decisions of this Court have reaffirmed the same doctrine. *In re Rahrer* (140 U. S. 545–555) this Court said:

" The power of Congress to regulate commerce among " the several States when the subjects of that power are " national in their nature is also exclusive. The Consti- " tution does not provide that interstate commerce shall " be free, but by the grant of this exclusive power to reg- " ulate it it was left free except as Congress might impose " restraint."

The point of time when Federal control over interstate commerce ceases and State control begins has been declared by this Court in *Leisy* v. *Hardin* (135 U. S. 100), following *Bowman* v. *Chicago, &c., Railway Company* (118 U. S. 465), to be (p. 124) " when the property in question " becomes mingled in the common mass of property " within the State."

Following the doctrine of the cases, *supra*, it is there-

fore beyond question that this property, until its delivery to the consignees, was the exclusive subject of interstate commerce. The interstate commerce law wholly ignores the rate of charge named in the bill of lading, and makes controlling the published tariff rates. The common carrier's liability for any departure therefrom is made by that law highly penal. While the property was thus circumstanced—a subject of interstate commerce in every sense—it is manifest that the State law here in question could have no operation upon it, because the State had no power of control over it.

By section six of the interstate commerce law of February 4, 1887 (24 Stats. 383, *supra*), it is made unlawful "to charge, demand, collect, or receive from any person "or persons *a greater* or *less* compensation for the trans- "portation of passengers or property, or for any service "in connection therewith, than is specified in such pub- "lished schedule of rates, fares, and charges as may at "the time be in force," and by section ten the act of its agent or employé in doing or permitting to be done, or aiding or abetting, "any act, matter, or thing in this act "prescribed or declared to be unlawful, is to be deemed "guilty of a misdemeanor, and shall, upon conviction "thereof in any district court of the United States within "the jurisdiction of which such offence was committed, "be subject to a fine of not to exceed five thousand dol- "lars for each offence."

With this positive and highly penal law before him, plaintiff in error's agent at Coleman was, by law, prohibited from doing the very thing that the State statute here in question compelled him to do. In other words, by the Federal law the published rate or tariff controlled him, and his act in ignoring the same was made by the same law a misdemeanor, and subject to this extreme

penalty. Under such conditions he could not be expected to shut his eyes to the consequences of possible wrongdoing on his part, and without proper inquiry in ascertaining the correctness of the charges disclosed by this bill of lading before delivering the property to the consignee. Nor, under such circumstances, can the railway company, as principal, be held justly subject to this State statute. When this property reached its destination, the railway company at that point was represented by and acting in the person of its agent; it had received the property from its connecting carrier, by whom the bill of lading was issued. Moreover, this shipment passed over continuous lines or routes operated by more than one common carrier and was transported under a joint tariff, as such tariff is defined in section six of the Interstate Commerce Act. With respect thereto said section provides:

"Such joint rates, fares, and charges on said continuous "lines so filed as aforesaid" (with the Interstate Com- "merce Commission) "shall be made public by such com- "mon carriers when directed by said Commission, in so "far as may, in the judgment of the Commission, be "deemed practicable; and said Commission shall, from "time to time, prescribe the measure of publicity which "shall be given to such rates, fares, and charges, or to "such part of them as it may deem it practicable for such "common carriers to publish, and the places in which "they shall be published; but no common carrier, party "to any such joint tariff, shall be liable for the failure of any "other common carrier, party thereto, to observe and ad- "here to the rates, fares, and charges thus made and pub- "lished."

In other words, while each common carrier is required to print and keep for public inspection at each of its stations its rates of freights and fares for traffic over its lines, "joint" tariffs are not thus required to be published

at every station on such "continuous lines or routes oper-
" ated by more than one common carrier." Hence, neither plaintiff in error nor its agent at Coleman could be found guilty of negligence or delay in thus posting its joint rates with other carriers at its station at Coleman, or held to be negligent in advising its agent there of any change or reduction in rate.

Congress has never made a bill of lading conclusive as is sought to be done by the statute of Texas. Bills for that purpose have been introduced and have been rejected. The original interstate commerce law has since stood without amendment in that regard, and by it the published tariffs, whether of single lines or joint tariffs upon continuous lines operated by more than one common carrier, form the controlling rates. Hence it is obvious that with respect to interstate shipments no State statutes can make such bills of lading conclusive in this regard, and thus override the Federal statute. To concede such power in the States would at once result in that conflict of regulation with respect to interstate commerce which this Court in *Wabash, &c., Railway Company* v. *Illinois* (118 U. S. 557, *supra*) so clearly demonstrates. It is manifest, therefore, that the State act here in question has legitimate and exclusive operation only upon the transportation of goods having its origin and destination wholly within the State. The attempt to apply it to this interstate shipment clearly and certainly renders the statute *pro tanto* invalid and inoperative.

Recognition of the power of the State of Texas to apply this statute to an interstate shipment of property would instantly open wide the door to like legislation elsewhere. The suggestion that such power could be constitutionally exercised would open such inviting field for legislation that the example set by Texas would undoubtedly

be promptly followed elsewhere. The result would be to make the interstate commerce law in this important and controlling respect wholly subordinate to State legislation, and result in general abdication on the part of the Federal Government of that exclusive control over interstate commerce which the grant of constitutional power clearly gives, and which this Court has hitherto upheld with strong hand. The exclusive power of control over interstate commerce, vested under the Constitution, has been exercised by Congress, and its will in that regard is supreme. Having, by the existing law, made the tariffs, both local and joint, controlling in matters of rates and fares, it is manifest that such legislation excludes all idea that the carrier's bill of lading in that regard should in any way be held to affect or control such rates. Assuming that Congress might so legislate, it plainly has not done so. Its existing legislation, because exclusive, covers the whole field. The regulations thereby imposed are not subject to alteration or change through State statutes. When, as here, the subject-matter is wholly interstate commerce in the plainest sense, the State statute can have no application thereto. Least of all can it so apply when it seeks to substitute and make conclusive the bill of lading as against the published tariff rates and charges which Congress has affirmatively and expressly declared shall be controlling, and which it has made it a penal offence to disregard.

Respectfully submitted.

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J. W. TERRY,
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GEO. R. PECK,
General Solicitor.

APPENDIX

17th Legislature, Special Session, p. 35.

CHAPTER XXVI.

AN ACT to prohibit railroad companies, their officers, agents, and employés, from making excessive charges for carrying and transporting freight, goods, wares, and merchandise, and to require said companies, their officers, agents, and employés, to deliver freight, goods, wares, and merchandise on the payment of freight charges due as shown by the bill of lading, and to provide penalties for the violation of this act.

SECTION 1. *Be it enacted by the Legislature of the State of Texas*, That it shall be unlawful for any railroad company in this State, its officers, agents, or employés, to charge and collect, or to endeavor to charge and collect, from the owner, agent, or consignee of any freight, goods, wares, and merchandise, of any kind or character whatever, a greater sum for transporting said freight, goods, wares, and merchandise than is specified in the bills of lading.

SEC. 2. That any railroad company, its officers, agents, or employés, having possession of any goods, wares, and merchandise of any kind or character whatever, shall deliver the same to the owner, his agent, or consignee, upon payment of the freight charges as shown by the bill of lading.

SEC. 3. That any railroad company, its officers, agents, or employés, that shall refuse to deliver to the owner, agent, or consignee any freight, goods, wares, and merchandise of any kind or character whatever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares, or merchandise, to an amount equal to the amount of the freight charges for every day said freight, goods, wares, and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading, to be recovered in any court of competent jurisdiction.

Approved May 6, A. D. 1882.

Takes effect ninety days after adjournment.

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Supreme Court U. States

159 U. S.

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